

(48)

FILED

APR 23 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE

Name ALFARO MIGUEL A
(Last) (First) (Initial)

Prisoner Number F-17175

Institutional Address SAN JUAN VALLEY STATE PRISON FAC A4 111-J
P.O. BOX 1050 SOLEDAD, CA 93960 1050

UNITED STATES DISTRICT COURT

SI

NORTHERN DISTRICT OF CALIFORNIA

CV 08

2114

MIGUEL ANGEL ALFARO
Full Name of Petitioner

Case No. (To be provided by the clerk of court)

vs.

E-filing

(PR)

M.S. EVANS, WARDEN PETITION FOR A WRIT OF HABEAS CORPUS
Name of Respondent
(Warden or jailor)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

SUPERIOR COURT OF CALIFORNIA SAN MATEO COUNTY
Court Location

(b) Case number, if known SC 059091A

(c) Date and terms of sentence MARCH 3, 2006 10 YEARS 4 MONTHS

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No

Where? SALINAS VALLEY STATE PRISON FAC A 4 III - J P.O BOX 1050 SLOTTED -
(Name of Institution) (Address) CA 93960-1050

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

TERRORIST THREATS PENAL CODE # 422

FIRST DEGREE BURGLARY PENAL CODE # 460(A)

3. Did you have any of the following?

Arraignment: Yes X No Preliminary Hearing: Yes X No Motion to Suppress: Yes No X

4. How did you plead?

Guilty _____ Not Guilty _____ Nolo Contendere X

Any other plea (specify) NO OTHER PLEA

5. If you went to trial, what kind of trial did you have?

Jury _____ Judge alone X Judge alone on a transcript _____

6. Did you testify at your trial? Yes ___ No X

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes X No ___
 (b) Preliminary hearing Yes X No ___
 (c) Time of plea Yes X No ___
 (d) Trial Yes ___ No X
 (e) Sentencing Yes ___ No ___
 (f) Appeal Yes X No ___
 (g) Other post-conviction proceeding Yes X No ___

8. Did you appeal your conviction? Yes X No ___

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes <u>X</u>	No ___	<u>2006 DENIED</u>
			(Year) (Result)
Supreme Court of California	Yes <u>X</u>	No ___	<u>2007 DENIED</u>
			(Year) (Result)
Any other court	Yes ___	No <u>X</u>	_____
			(Year) (Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes ___ No X

(c) Was there an opinion? Yes X No ___

(d) Did you seek permission to file a late appeal under Rule 31(a)?
 Yes ___ No X

If you did, give the name of the court and the result:

NO LATE APPEAL

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☐ No ☒

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court NO COURT

Type of Proceeding NO PROCEEDING

Grounds raised (Be brief but specific):

a. NO GROUNDS RAISED

b. _____

c. _____

d. _____

Result: NO RESULT Date of Result NO DATE

II. Name of Court NO COURT

Type of Proceeding NO PROCEEDING

Grounds raised (Be brief but specific):

a. NO GROUNDS RAISED

b. _____

c. _____

d. _____

Result: NO RESULT Date of Result NO DATE

III. Name of Court NO COURT

Type of Proceeding

NO PROCEEDING

Grounds raised (Be brief but specific):

a.

NO GROUNDS RAISED

b.

c.

d.

Result

NO RESULT

Date of Result

NO DATE

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes ___ No X

(Name and location of court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One:

INEFFECTIVE COUNSEL

Supporting Facts: BOTH ATTORNEYS FAILED TO ACT IN A MANNER TO BE EXPECTED. THE DEFENDANT WOULD HAVE A MORE FAVORABLE RESULT IF THE ATTORNEYS USED ALL THE RESOURCES AVAILABLE. ATTORNEYS WERE NOT DILIGENT ADVOCATES.

Claim Two: "ENHANCEMENTS".

Supporting Facts: PETITIONER HAS REMAINED FREE OF ANY FELONY CONVICTIONS OR ACTS THAT WOULD RESULT IN A FELONY CONVICTION SINCE 1986, A PERIOD OF TWENTY ONE YEARS.

Claim Three: UNLAWFUL IMPRISONMENT. FOR A PERIOD OF FIVE YEARS, BECAUSE OF ENHANCEMENT.

Supporting Facts: PETITIONER WAS SENTENCED TO A FIVE YEAR TERM FOR ENHANCEMENT. THESE TERMS DO NOT APPLY. PETITIONER MAKES THIS CLAIM TO PREVENT UNLAWFUL IMPRISONMENT IN THE AMOUNT OF FIVE YEARS.

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

BOTH ATTORNEYS FAILED TO PROPERLY RESEARCH EVIDENCE OF ENHANCEMENTS THAT WILL HAVE A DRAMATIC RESULTS ON THE PETITIONER'S FUTURE.

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

PEOPLE V. POPE (1979) 23.C.63d 412; PEOPLE V. FASSELMAN 1983
33.C.3d 572. P.C.#1 667.5 A.5. PRACTICE & PROCEDURE sec#35.29.

Do you have an attorney for this petition? Yes ☐ No ☒

If you do, give the name and address of your attorney:

PRO SE, NO ATTORNEY

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on

April 18, 2008
Date

Miguel Alfaro
Signature of Petitioner

Court of Appeal, First Appellate District, Div. 4 - No. A113167
S151117

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

MIGUEL ANGEL ALFARO, Defendant and Appellant.

The petition for review is denied.

SUPREME COURT
FILED

APR 25 2007

Frederick K. Ohlrich Clerk

DEPUTY

GEORGE

Chief Justice

DONN GINOZA
Attorney at Law
41 Sutter Street, #1622
San Francisco, California 94104
Tel: 415.846.3578

May 3, 2007

Miguel A. Alfaro
F17175
Salinas Valley State Prison
P.O. Box 1050
Soledad, California 93960-1060

Re: *People of the State of California v. Miguel A. Alfaro*
Case No. A113167

Dear Mr. Alfaro:

Unfortunately, the Supreme Court did not agree to review the decision of the Court of Appeal. A copy of the order is enclosed.

This will conclude my representation of you. You may on your own petition the U.S. Supreme Court within 90 days after the petition is denied in the California Supreme Court. Within one year after the 90 day period expires, you may raise your federal issues in a federal habeas petition.

Enclosed also are the court records in your case.

Sincerely,



DONN GINOZA
Attorney at Law

Encl.

LAW OFFICE OF STEVEN A. CHASE

STEVEN A. CHASE
Attorney at Law

421 Grand Avenue
Suite A
South San Francisco, California 94080-3635
Telephone: 650 589-6990
Facsimile: 650 589-3980

650-363-7899

Court Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611018451
Cashier ID: almaceh
Transaction Date: 04/23/2008
Payer Name: MIGUEL ALFARO

WRIT OF HABEAS CORPUS
For: MIGUEL ALFARO
Case/Party: D-CAN-3-08-CV-002114-001
Amount: \$5.00

CHECK
Check/Money Order Num: 257690715
Amt Tendered: \$5.00

Total Due: \$5.00
Total Tendered: \$5.00
Change Amt: \$0.00

SI

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.